

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915

No. 24

LATTA & TERRY CONSTRUCTION COMPANY, APPELLANT.

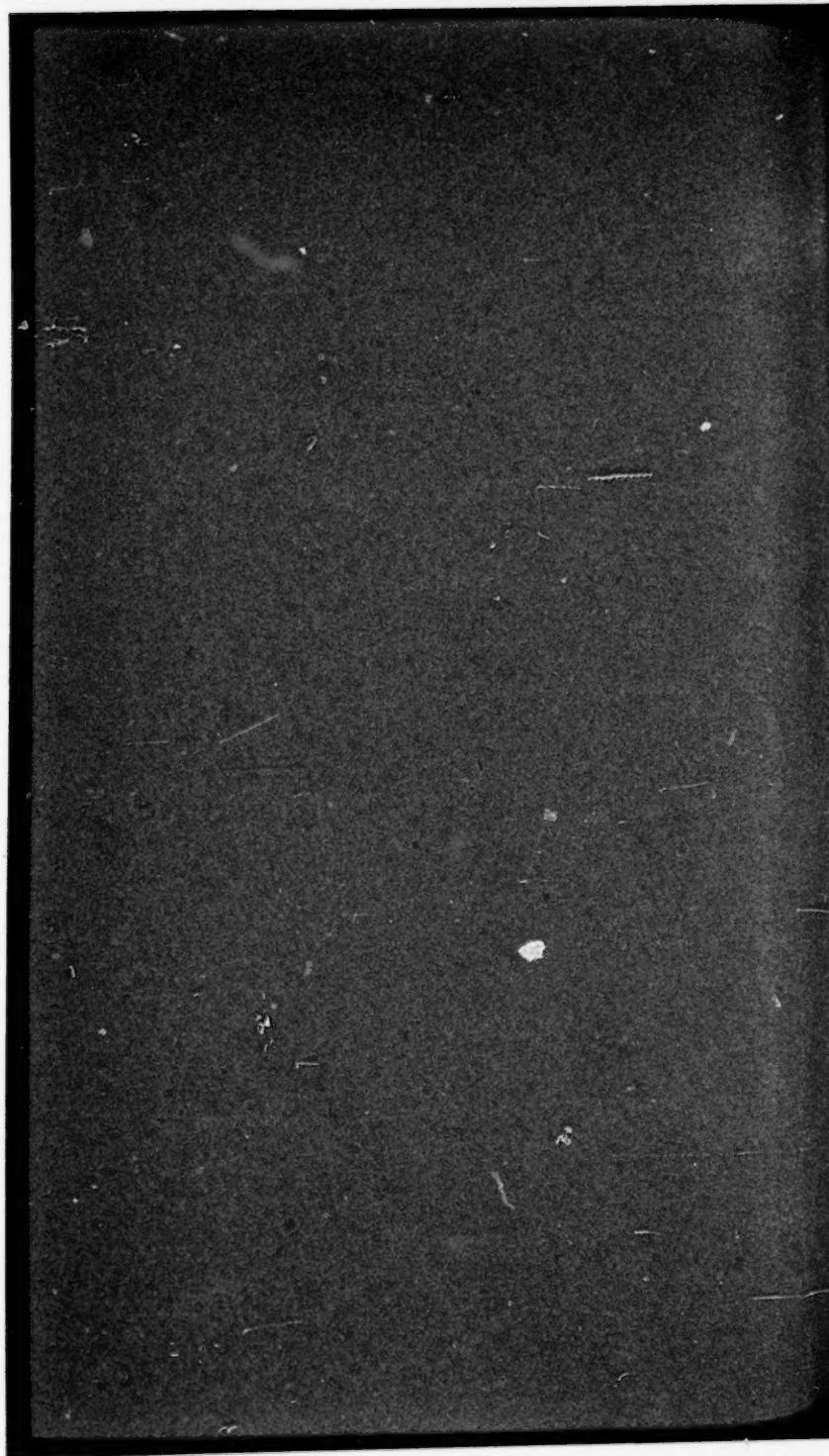
THE BRITISH STEAMSHIP "RAITHMOOR," WILLIAM  
EVANS, MASTER AND CLAIMANT.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA.

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FILED OCTOBER 21, 1915.

(23,893)



(23,893)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 272.

LATTA & TERRY CONSTRUCTION COMPANY, APPELLANT,

*vs.*

THE BRITISH STEAMSHIP "RAITHMOOR," WILLIAM  
EVANS, MASTER AND CLAIMANT.

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THE EASTERN DISTRICT OF PENNSYLVANIA.

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a In the Supreme Court of the United States, October Term,  
1913.

No. —.

LATTA & TERRY CONSTRUCTION COMPANY, Appellant,  
vs.  
BRITISH STEAMSHIP "RAITHMOOR," Whereof William Evans is  
Master and Claimant, Appellee.

Appeal from the District Court of the United States for the Eastern  
District of Pennsylvania.

1 37 of 1909.

LATTA & TERRY CONSTRUCTION COMPANY, in Its Own Right and as  
Assignee & Bailee of the Money and Effects of Benjamin Abbott,  
a Seaman,

vs.

STEAMSHIP "RAITHMOOR," Whereof W. Evans is Master.

Damages from Collision. Stipulation, \$25,000.

H. Alan Dawson, J. Rodman Paul, Biddle, Paul & Jayne, for  
Libellant; John A. Toomey, Henry R. Edmunds, for Respondent.

- |               |  |
|---------------|--|
| 1909, July    | 23. Libel filed and process allowed. Stipulation of the Fidelity & Deposit Company of Md. as surety in \$250 for costs taken and filed and Writ of Attachment exit ret'ble July 30, 1909.                  |
| "             | 23. Writ filed with agreement of parties endorsed that claim may be made and stipulation entered with the same force and effect as if the vessel had been duly attached by the Marshal and return so made. |
| "             | 23. Claim of William Evans, Master of the Steamship, filed.  |
| "             | 23. Stipulation of William Evans, Master, Claimant, with W. Lyman Biddle as surety in \$25,000 taken and filed.  |
| August        | 9. Answer of William Evans, Master and Claimant of the Steamship "Raithmoor" filed.  |
| 1911. January | 21. Statement of facts, &c., and depositions of the respective parties are presented and read, and the depositions (3 Lib. and 7 Resp.) are filed.   |
| "             | 21. The cause is argued and decision reserved.   |

- February 24. Opinion of the Court filed. Decree to be prepared in conformity therewith.
- September 15. Agreement of parties in writing filed, that the damages sustained by the Libellant as to "Barge No. 1", "Pile Driver No. 7" and cargo amount to \$3,665, and as to the money and effects of Benjamin Abbott \$100, together \$3,765, with interest at 6% from Sept. 1, 1909, till paid.
- " 15. Libellant's Bill of Costs filed.
- " 15. On motion of Proctors for Libellant, Decree that the Libellant recover from William Evans, Claimant, and W. Lyman Biddle, his Stipulator, the sum of Three Thousand Seven Hundred and Sixty-five Dollars, with interest from September 1, 1909, till paid, together with the costs amounting to \$164.20.

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- 1911, September 15. Further Decree that the Libel be dismissed for want of jurisdiction as to the damage to the unfinished beacon and temporary platform claimed by Libellant.
- " 29. Certificate of Jurisdictional question involved filed.
- 1912, March 8. Order of Proctors for Libellant filed to mark the decree and judgment in favor of Libellant for Three Thousand Seven Hundred and Sixty-five Dollars with interest from September 1, 1909, until paid, and for costs amounting to One Hundred and Sixty-four Dollars and Twenty cents, satisfied of record upon payment of Clerk's costs only; but without prejudice however to Libellant's right of appeal or other proceedings on account of other claims contained in said Libel as to which the Libel was dismissed by the Court for want of jurisdiction, under Decree dated the 15th day of September, A. D. 1911.

Attest:

GEORGE BRODBECK,

*Deputy Clerk.*

- 1912, May 10. After hearing on motion of Mr. Edmunds for reduction of the stipulation in Twenty-five Thousand Dollars heretofore given by him it is ordered and adjudged that the same be reduced and stand for in the sum of Twenty Thousand Dollars.

- 1913, September 13. Assignments of Error filed.  
 Petition for and order of allowance of appeal  
 to U. S. Supreme Court.  
 Bond sur appeal in \$250.00 and order of ap-  
 proval filed.  
 Citation allowed and issued.  
 Citation returned "service accepted" and filed.  
 Stipulation as to record sur appeal filed.
- October 10. Transcript of record sur appeal transmitted  
 to U. S. Supreme Court.

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*Libel.*

Filed July 23, 1909.

In the District Court of the United States in and for the Eastern  
 District of Pennsylvania.

## In Admiralty.

To the Honorable the Judges of the said Court:

The Libel and Complaint of the Latta & Terry Construction Com-  
 pany, a Corporation of the State of New Jersey, in its own right and  
 as Assignee and bailee of the money and effects of Benjamin Abbott,  
 a seaman, Against the British Steamship "Raithmoor," whereof W.  
 Evans is Master, her tackle, apparel, furniture, boilers, engines and  
 machinery, and against all persons intervening for their interests  
 therein, in a cause of collision, civil and maritime, alleges, on in-  
 formation and belief, as follows:—

First. At all times hereinafter mentioned, libellant was and still is  
 a Corporation of the State of New Jersey, engaged in the business,  
 inter alia, of erecting, constructing and doing work upon beacon  
 lights and light stations. Libellant was and still is the owner of a  
 certain Pile-driver, or pile driving machine No. 7, and also of a cer-  
 tain Barge No. 1. Said Pile-driver is a floating vessel, about 60 feet  
 in length, about 22 feet in beam, and about three feet draft, with a  
 house or engine room on the after end, and with a superstructure for  
 driving piles erected on the forward part and rising about 56 feet  
 above the deck; Said Pile-driver was used and operated afloat in  
 sinking caissons, cylinders and piling, and its value before the col-  
 lision hereinafter mentioned was about Six thousand Dollars. The  
 said Barge was a wooden vessel about 60 feet in length, about  
 22 feet in beam and about three feet draft with a small house  
 about 8 feet high erected on the after end, and its value before  
 the collision hereinafter mentioned was about Two thousand Dollars.  
 At the time of the collision hereinafter mentioned said Barge had  
 on board a cargo consisting of cement, iron work, tools and supplies  
 of the value of upwards of One thousand Dollars, and there was also  
 on board said Barge the money and effects of one Benjamin Abbott  
 hereinafter set forth.

Second. The Steamship "Raithmoor" is a British vessel, 323 feet

in length, 47 feet one inch in breadth or beam, 22 feet 6 inches in depth, and of 3112 gross tons and 1990 net tons. Said Steamship is owned by the Moor Line, limited, and managed by Messrs. W. Run-ciman & Co., Newcastle-on-Tyne, England; her port of registry is London, England; and she is now at the port of Philadelphia, and within the Admiralty and Maritime jurisdiction of this Honorable Court.

Third. On the 18th day of July 1909, and during all the period of time hereinafter mentioned or referred to, libellant was lawfully engaged in constructing and erecting for the United States Government the foundations and a portion of the superstructure of a Government ship channel beacon light at a point in the Delaware River commonly known as Goose Island Flats. Said beacon was located near mid-stream in navigable waters 27 feet deep at mean low water, and at a point about 300 feet East Northeast of the Red Gas Buoy No. 26 which marks the Eastern edge of the present prescribed ship channel, and about three-fourths of a mile to the Westward of, and off the shore of the State of New Jersey, and was surrounded on every side by water. Said beacon light was being constructed by libellant under contract with and under the direction of and supervision of the United States Government, to be used and maintained by the said United States Government as a ship channel light to mark the turn in and the limits of the ship channel, and solely as an aid to navigation.

5 In the work of erecting said beacon light, libellant had constructed a wooden platform about 15 feet square, and about 12 feet above the surface of the water at mean low water, and resting on wooden piles driven into the mud at the bottom of the river; and in said work libellant had also sunk at the edge of said platform on the South side, three iron caissons or cylinders driven into the mud at the bottom of the river, and extending about 18 feet above the surface of the water at mean low water. At the time of the collision hereinafter mentioned, there were certain materials, tools and supplies on said platform. At the time of said collision, the pile-driver No. 7 hereinabove described was securely anchored a few feet to the Southwest of said platform and cylinders, heading up stream, and being held in a stationary position so as not to be swung or affected by wind or tide, by means of several anchors extending out in different directions. Said Barge No. 1 hereinbefore described was securely made fast to and lashed against the port side of the said Pile-driver, also heading up stream, the starboard side of the Barge being against the port side of the Pile-driver.

About 6 o'clock P. M. on the said 18th day of July 1909, lights were put up to mark the said beacon and said vessels, in accordance with the instructions and directions of the Agent of the United States Government in charge of said work, and in accordance with the usual manner and custom of marking such operations, as follows, to wit:—A large post eight-day, red lantern, lighted and burning brightly and showing a red light, was set up on the said platform, an ordinary size white riding lantern, lighted and burning brightly and showing a white light, was put up on a brace extending



out from the leads on the said Pile-driver about 20 feet or so above the deck; and an ordinary size red lantern, lighted and burning brightly and showing a red light, was put up on a pole which extended up from the after port corner of the house on the rear end of the said Barge, so that said light was about 12 feet above the deck of the Barge. Said lights were visible for a distance of at least two miles around the horizon, and continued to burn brightly until after the collision hereinafter mentioned. A competent watchman was on duty and kept a vigilant lookout on said Pile-driver, Barge and beacon from 4 o'clock P. M. on said day until after the collision hereinafter mentioned.

Fourth. On the said 18th day of July, 1909, about 8.30 P. M., the said Steamship "Raithmoor" was proceeding up the Delaware River in the vicinity of the said Goose Island Flats, on a voyage from a port in the Kingdom of Sweden, or from another foreign port, to the port of Philadelphia, with a full cargo, and drawing about 22 feet aft. The weather was clear, the wind was light, and the tide was about the first hour of flood. The time of the collision hereinafter mentioned was about 8.30 P. M. on said 18th day of July 1909. There was ample room and opportunity for the said steamship to have navigated in the regular ship channel, which was clearly marked and lighted, and the Eastern edge of which was fully 300 feet to the Westward of the position of libellant's Barge, Pile-driver and beacon; and it was the duty of said Steamship to so navigate and not to come into collision with libellant's said vessel or beacon. But the said Steamship instead of keeping in said channel and clear of libellant's said vessels and beacon, and in violation of the rules and requirements of proper and prudent navigation, negligently steered to the Eastward and out of said channel, and with great force and violence ran into and came into collision with libellant's said Barge, which was lashed to the said Pile-driver as hereinabove described, striking said Barge in the stern near the starboard side. At the moment of impact the said Steamship was proceeding at a high and excessive rate of speed, and the force of the collision tore a hole in said Barge, crushed its after end and swung said Barge and said Pile-driver loose from their moorings and forced them against and over the said iron cylinders and said platform and pilings, doing great damage to said Barge, Pile-driver and cargo and practically destroying said cylinders, piling and platform. As a result of the injuries sustained by said Barge, it sank in the water so that nearly all of the cargo, consisting of material, tools, etc., was lost and destroyed, as well as the money and effects of the said Benjamin Abbott which were in the house on said barge. The material, tools and supplies which were upon said platform were lost and destroyed in the destruction of said platform. The said Pile-driver has since been towed to New-castle, Delaware, and said Barge has been towed to Wilmington, Delaware, at which places both vessels have been tendered to representatives of the said Steamship "Raithmoor" for survey and examination.

Fifth. The said collision was not caused by nor contributed to by

any fault or negligence on the part of the libellant, its officers, agents or servants, or any one for whom it may have been responsible, but was due solely to and caused wholly by the fault, inefficiency and negligence of the owners, Master, Pilot, officers and crew of the said Steamship "Raithmoor" and those in charge of her navigation, in the following respects, inter alia:

1. In that she was not under the command of a competent Master Pilot or other person.

2. In that she did not have a lookout on duty forward.

3. In that she did not keep a good lookout.

4. In that she did not have a competent person on duty at the wheel.

5. In that she failed to keep in the channel.

6. In that she failed to keep clear of libellant's barge, Pile-driver and beacon.

7. In that she was so unskillfully and improperly steered and navigated that without justification or excuse she came into collision with libellant's barge, Pile-driver and beacon.

8. In that she was proceeding at a high and immoderate rate of speed under the circumstances.

9. In that she failed to stop and reverse in time to avoid the collision.

8 10. In that she failed to stop and reverse when the collision became imminent.

11. In that she failed to give any signal or warning of her presence.

12. In that she failed to take proper precautions to avoid the collision.

13. In other respects to be shown at the trial.

Sixth. As a result of the collision, and by reason of the premises, libellant has suffered great damage and costs in the destruction of said beacon, in the damage to the said Pile-driver and to the said Barge, in the loss of materials, tools and supplies upon the said Barge, Pile-driver and platform, and will suffer further loss for the detention of said Pile-driver and said Barge while undergoing repairs. Under libellant's contract with the United States Government, the libellant is subject to a heavy penalty for failure to complete said beacon within the time limit fixed in said contract. But for said collision libellant would have completed said beacon within the stipulated period, but by reason of said collision libellant will be unable to complete said work until a considerable time after the expiration of the said time limit; and libellant may therefore suffer further damages in the amount of said penalty, which cannot accurately be estimated at this time.

There was further lost and destroyed on board said barge in the sinking thereof by reason of the collision, the sum of \$151.92 in cash and also certain clothing and effects, valued at \$30.00, the property of one Benjamin Abbott, a seaman in the employ of libellant, of which money and effects libellant is bailee and assignee, and for the value of which, \$181.92, libellant claims to recover as part of its damages in this action.

Libellant's aggregate damage, comprising the said items above mentioned or referred to, so closely as it can be estimated now, will amount to upwards of Twenty thousand (\$20,000) Dollars.

9 Seven. All and singular the premises of this Libel are true and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore libellant prays that process in due form of law, according to the practice of this Honorable Court in Admiralty and Maritime causes, may issue against the said Steamship "Raithmoor", her tackle, apparel, furniture, boilers, engines and machinery, and that the said W. Evans, Master, and all other persons claiming any interest therein, may be cited to appear and answer on oath all and singular the matters aforesaid; and that this Court will be pleased to decree the payment of the damages aforesaid, with interest and costs, and that the said Steamship "Raithmoor", her tackle, apparel, furniture, boilers, engines and machinery may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in justice it may be entitled to receive.

LATTA & TERRY CONSTRUCTION CO.,  
By HARRISON W. LATTA, *President.*

H. ALAN DAWSON,  
J. RODMAN PAUL,  
BIDDLE, PAUL, MILLER & JAYNE,  
*Proctors for Libellant.*

UNITED STATES OF AMERICA,  
*Eastern District of Pennsylvania,  
City and County of Philadelphia, ss:*

Harrison W. Latta being duly sworn according to law, deposes and says that he is President of the Latta & Terry Construction Company, a corporation of the State of New Jersey, the libellant in the above cause; and that the facts set forth in the foregoing Libel are true to the best of his knowledge, information and belief.

HARRISON W. LATTA.

Sworn and subscribed to before me this 23rd day of July, A. D. 1909.

[SEAL.]

ROYAL W. URIE,  
*Notary Public.*

Commission expires March 20, 1913.  
Stipulation \$25,000.00.

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*Answer.*

Filed Aug. 9, 1909.

In the District Court of the United States in and for the Eastern District of Pennsylvania.

In Admiralty.

The Answer of William Evans, Master and Claimant of the British Steamship "Raithmoor," to the libel and complaint of the Latta & Terry Construction Company, against the said Steamship "Raithmoor," her tackle, apparel, boilers, engines and machinery, in a cause of collision, civil and maritime alleges as follows:

First. Respondent has no knowledge of the facts contained in the first paragraph of said libel and asks that the same be proven if material.

Second. Respondent admits the facts set forth in the second paragraph of said libel to be true.

Third. In Answer to the third paragraph of said libel this respondent says that he is not in possession of knowledge sufficient to base a belief upon the truth or falsity of the allegations therein concerning the alleged beacon in course of construction under a contract with the United States, its exact location or the exact location and dimensions of libellants' Barge, Pile-driver, caissons or cylinders and platform and therefore neither denies or admits the same, and requests that the same may be specifically proved if they shall hereafter appear to be material. Respondent however denies that the said Barge and Pile-driver were anchored in a proper place, also that the lights placed on said Barge, Pile driver or platform under the alleged instructions and directions of the agent for the United

States Government in charge of said work, were the usual  
11 lights to be displayed under the circumstances, or that they were properly placed, as in said paragraph mentioned, and also that the watchman on said pile-driver was properly stationed or that he kept a vigilant lookout which it was his duty to do.

Fourth. Respondent denies that said collision was caused by the negligence of those in charge of the Steamship "Raithmoor" as alleged in the fourth paragraph of said libel and avers the truth to be as follows: On the 18th day of July, 1909, about 12:15 P. M. the said steamship with a cargo of iron ore aboard and having a full complement of officers and crew, 27 all told including the respondent as Master, bound on a voyage from Lueka, Sweden, to Philadelphia arrived at the Delaware Breakwater. After taking aboard a pilot as required, the said steamship proceeded up the Delaware River, stopping at Reedy Island Quarantine for Medical Inspection and leaving there with all her lights properly set and burning shortly after eight o'clock P. M. for Philadelphia. The night was dark, overcast with occasional squalls of wind from the northwest. The Master, Second Mate and Pilot were on the bridge, a competent seaman was

at the wheel, while another competent seaman was forward on the vessel keeping a vigilant lookout. The Mate was also forward on duty close to the lookout. That nothing of importance occurred until the Steamship reached the Goose Island Channel in navigating which it is necessary in passing Elbow Buoy No. 24 to keep coming gradually on a port helm until the upper end of Goose Island Bar, near Buoy No. 26 is reached, at which place there is a sharp turn

to the North East of not less than five points to bring Deep 12 Water Point Ranges on. That the said channel is narrow and one of the most difficult places to navigate in the Delaware River and cannot be navigated in any other way than that mentioned. It was while proceeding along this channel and after passing Elbow Buoy No. 24 at a speed of from seven to eight knots an hour which speed it was necessary to maintain, that the respondent while looking through his glasses to ascertain the meaning of some lights ahead discovered some stationary objects directly in the path of the steamship. This was immediately reported to the Pilot who at once ordered the wheel hard a starboard and the steamship to stop, which orders were promptly obeyed, but not in time to avoid a collision, that while going to port under the hard a starboard wheel, the bluff of the steamship's starboard bow struck the Barge on the stern near the starboard side doing some damage. The steamship after stopping came to anchor where she remained for about an hour. During this time a small boat manned by several of the crew was sent by respondent's orders to libellant's Barge to bring the watchman to the steamship which was done. That the watchman remained on the steamship until her arrival in Philadelphia.

That the steamship had several of her plates injured in said collision and will be obliged to undergo repairs and received damage to the extent of Five hundred dollars.

Fifth. Respondent denies each and every allegation of negligence charged against the owners, Master, pilot, officers and crew of said Steamship in the fifth paragraph of said libel and avers that the said Master, pilot, officers and crew were competent and properly performed their respective duties aforesaid, that the steamship was

properly steered and navigated and was proceeding at a proper speed prior to the collision, that her engines were 13 stopped when the collision became imminent, that every precaution under the circumstances was taken by those in charge of the Steamship to avoid the collision and that no signal of any kind could have been given by the steamship that could have been answered by the Barge.

And for further Answer, respondent avers that the structure referred to in the libel was being erected by libellant in the deepest water of the narrow channel above mentioned and on account of the difficulty in navigating the same, it was its duty to exercise great care in anchoring its said barge and pile-driver, and placing proper lights on and about the same, as well as on the said caissons or cylinders and platform, so as to give proper warning to vessels approaching from the southward, of their presence, that instead of doing so,

libellant was guilty of gross negligence in the conduct of its operations.

1. In anchoring its said Barge and pile-driver in the channel to the westward of the structure in the course of erection, thereby obstructing said channel and interfering with proper navigation of large steamships therein.

2. In placing the red and white lights on its said barge pile-driver and platform and in the manner alleged in said libel. That said lights so arranged were unlawful, improper and misleading.

3. In placing a red light on a platform, fifteen by fifteen feet and twelve feet high, among the tools, machinery, materials and debris piled thereon and back of the three iron caissons or cylinders eighteen feet high erected directly in front of said platform and said light and near the mast of the pile-driver fifty-four feet high a short distance off, all of which completely obstructed a view of said light from the southward.

4. In not displaying proper lights in proper positions so as to be visible all around the horizon.

5. In displaying a white light as alleged in said libel.

6. In not keeping a proper lookout on said barge.

7. In failing to take proper precautions to avoid a collision.

8. In premitting said channel to be unlawfully obstructed while conducting its said operations.

Sixth. Respondent denies that the libellant and said Benjamin Abbott sustained the damage complained of in the sixth paragraph of said libel and requests that the same be proved if material or that the uncompleted structure termed a beacon was in any sense a beacon. Respondent also excepts to the claim in said paragraph for damages to said alleged beacon or its foundation, caissons or cylinders or to the platform or the tools or materials thereon, or to said pile-driver or for the alleged damages to libellant under its contract with the United States Government because the same are not the subject of admiralty jurisdiction.

Seventh. In answer to the seventh paragraph of said libel the respondent denies the jurisdiction of the Court as above stated.

Wherefore respondent prays that the Court would be pleased to pronounce against the said libel and to be hence dismissed with reasonable costs.

#### 15 UNITED STATES OF AMERICA.

*Eastern District of Pennsylvania, ss:*

Henry R. Edmunds being duly sworn according to law deposes and says that he is proctor for William Evans, claimant and respondent in the above case that the said respondent as deponent is informed and believes is at present on his own vessel, the steamship "Raithmoor" now beyond the jurisdiction of this Honorable Court. That the matters set forth in said Answer are derived principally from the said William Evans, that respondent has read the said Answer and knows the contents thereof, and that the matters therein stated are true to the best of his knowledge, information and belief.

HENRY R. EDMUNDS.

Sworn and subscribed to before me this ninth day of August,  
A. D. 1909.

W. W. CRAIG,  
*Clerk U. S. District Ct. E. D. of Pa.*

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*Opinion.*

Filed Feb'y 24, 1911.

United States District Court, Eastern District of Pennsylvania.

No. 37 of 1909. In Admiralty.

THE RAITHMOOR.

Final Hearing.

McPHERSON,

*District Judge:*

On the evening of Sunday, July 18, 1909, the Raithmoor—a British steamship, 323 feet long, 47 feet beam, loaded with iron ore, and drawing  $22\frac{1}{2}$  feet—was coming up the Delaware in charge of a pilot. About 8.30 or 9 o'clock she collided with a scow and some other property belonging to the libellant, the Latta and Terry Construction Company, doing a good deal of damage. The night was dark and overcast, but lights could be easily seen over the usual distance. The tide was in the first hour of flood. Of the injury to the scow it is conceded that the admiralty has jurisdiction; but the right of the district court to entertain the suit for injury to the other property is denied. It is therefore necessary to consider this question in limine. The facts are these:

The Company was executing an independent contract with the United States, which bound them to furnish the necessary materials, labor, plant &c., and to erect in place a foundation pier to receive a gas beacon. The work was under the continual supervision of a government official, but had neither been finished nor accepted. The structure was to consist of three cylindrical piles of reinforced concrete to be sunk about  $19\frac{1}{2}$  feet into the bottom of the river, and to project 12 feet above the mean high water, these to be covered with a sheet steel cap. The piles were to be encased in steel and to be protected also by depositing rip-rap around them to a specified height. When completed the pier was to be used solely as a beacon on the edge of a navigable channel that has not yet been made ready, and the government was to instal upon the cap a lamp and other appliances. The site is  $\frac{3}{4}$  of a mile from the eastern or New Jersey shore, and about 2 miles from the western or Delaware shore, of the river, and is surrounded by navigable water, about 27 feet deep at low tide. The work was begun in June, and at the time of the collision was approaching completion. The piles were in place, and not much remained to be done except to put the metal cap into place, and deposit the rip-rap. The neces-



sities of the work required a temporary platform to be built close to the concrete piles. This was of wood, about 15 feet square, and rested upon wooden piling driven into the bottom of the river. A pile-driver was also necessary, and this, with a scow to hold materials, tools, &c., was anchored a few feet to the south. The pile-driver is a wooden floating scow having the usual apparatus built on the forward end, and an engine installed on the after end in a shed or house. Neither the pile-driver nor the scow has any motive power, but both are intended and adapted for use upon the water. The collision injured the scow and the pile-driver and practically demolished the concrete piles and the temporary platform.

Has the admiralty jurisdiction to redress the injury to the pile-driver, the concrete piles, and the temporary platform? The decisions leave the question in some doubt as to the pile-driver, but I incline to resolve the doubt in favor of the jurisdiction. I shall not take the superfluous trouble of doing again what Judge Cochran has already done so well in *Barnes vs. One Dredge Boat*, (D. C.) 169

18 Fed. 895. He has there collected the cases on this much litigated subject and has discussed them with care and discrimination, and I agree with his conclusion (p. 900) that "a navigable structure intended for the transportation of a permanent cargo, which has to be towed in order to navigate, is a 'vessel'". If this is correct the pile-driver is a vessel, and is subject to the admiralty jurisdiction.

The more difficult question concerns the unfinished beacon and the temporary platform. As it seems to me, they stand or fall together and need not be treated separately. If the beacon had been finished the platform would have been removed—or have ceased to be used—but it was an appliance necessary for the unfinished structure and I think may properly be considered as a part of it. Is an unfinished beacon, situated as this structure was, a subject of admiralty jurisdiction? If it had been finished and in use, *The Blackheath*, 195 U. S. 361 would undoubtedly support the action. The injury then would have been to "a government aid to navigation from ancient times subject to the admiralty; a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea." It may be added that the court explained in *Cleveland Terminal Co. vs. Steamship Co.*, 208 U. S. 316, that *The Blackheath* did not disturb the rule announced in *The Plymouth*, 3 Wallace, 20, namely, that "the true meaning of the rule of locality in cases of maritime torts was that the wrong must have been committed wholly on navigable waters, or at least the substance and consummation of the same must have taken place upon those waters to be within the admiralty jurisdiction. A substantial cause of action arising out of the wrong must be complete within the locality on which the jurisdiction depended."

And it was therefore held—as also in *The Troy*, 208 U. S. 19 321 that "The admiralty does not have jurisdiction of a claim for damages caused by a vessel to a bridge or dock which,



although in navigable waters, is so connected with the shore that it immediately concerns commerce upon land." And I may refer also to *Bowers Co. v. Federal Co.* (D. C.) 148 Fed. 290, *The Poughkeepsie*, (D. C.) 162 Fed. 495, (affirmed in 212 U. S. 558), and *The Curtin*, (D. C.) 152 Fed. 588—in which *The Blackheath* has been applied. But it is evident I think that the supreme court has not yet decided the pending question, which may be stated more narrowly in these words: Had this structure reached the point where it must be described as "a government aid to navigation," or was it still so incomplete that the maritime character of a beacon had not yet attached? I am aware that it may seem artificial to decide that the admiralty cannot redress this wrong, altho it is clear that if the beacon had been completed an injury to the concrete piles could be redressed as fully as an injury to the lamp. But the line of demarcation must be drawn somewhere. The materials intended to compose these piles would not be protected by the admiralty as long as they remained on shore, or on a projecting pier, or on any other structure affixed to the land or immediately serving commerce on land. They could only gain such protection by becoming devoted to maritime purposes, and there must necessarily be some point of time when the maritime character is taken on. Before that point is reached, all that can be said, as it seems to me, is that the work of transferring them from one jurisdiction to another is still in progress but has not yet been finished. The analogy of a ship seems to be instructive. Indeed, if it is applicable at all, it is controlling. There can be no doubt for what purpose a ship is intended, but while it is being built, even altho it may be afloat, admiralty declines to take

jurisdiction: after it has been finished and begins to carry on a maritime business, the jurisdiction attaches without delay.

This point has been often decided: *Ferry Co. vs. Beers*, 20 Howard 393; *Edwards vs. Elliott*, 21 Wall. 553, and many cases cited in note 37 upon page 828 of 1 Cyc. I do not see therefore upon what sufficient ground it can be held that the incomplete structure had already become a beacon of which the admiralty had acquired jurisdiction. It was still a mere collection or compound of materials partly put into place, but not yet devoted to the maritime purpose for which it was ultimately intended. Indeed, it might never be finished; the channel might never be widened; the government might change its mind before the work was done and might abandon the enterprise; and certainly neither the frame of a ship rotting on the ways, nor the skeleton of a beacon disintegrating under the action of the elements, offers the criteria needed to satisfy the tests of admiralty jurisdiction. The case under consideration is new, and presents some hardship, but I cannot convince my mind that the jurisdiction exists. I must hold therefore that the libellant cannot recover in this court for the damage to the concrete piles and the temporary platform; but as the suit is well brought for the injury to the scow and the pile-driver it is necessary to determine whether the steamship was at fault.

Upon this question I entertain no doubt. It is only necessary to point out that the place of collision was 300 feet to the eastward

of the extreme edge of the present navigable channel, in order to establish that the Raithmoor was where she had no business to be. It is abundantly clear from his own testimony that the pilot had got out of the channel and did not know accurately where he was. The site of the work was east of the point where the New Castle range intersects with the Deep Water Point range. Not far below an east and west line that would connect this point of intersection with the

21 site, a flash-light gas-buoy, No. 26 or Goose Bar Buoy, is situated. This is upon the extreme eastern edge of the channel as it now exists, and was burning on the night in question. (As already stated, the new beacon was to stand on the extreme eastern edge of the widened channel as it is intended to be.) Vessels coming up the river should leave No. 26 on the starboard hand, and while the turn to starboard (or north-east) from one range to the other should be begun a few hundred feet below the buoy, the probable explanation of the pilot's mistake is that he began to turn too soon and failed to see the buoy. He swears that he did not see it until after the collision, and undoubtedly he left it to port instead of to starboard, and, as I have already said, had managed to get 300 feet and more out of his proper course. Neither did he see the lights upon the work until the master called his attention to them, and he was then so near that the disaster could not possibly be avoided. The lights had been seen by the lookout more than a mile away and were promptly reported to the bridge, but it is probably true that the pilot did not hear the report—the night seems to have been more or less windy—and at all events such is his testimony, and this circumstance may help to account for his blunder. It seems useless to speculate about what he ought to have done, or might have done, if he had heard the report or had seen the lights himself. I assume the fact to be as he has distinctly and repeatedly testified, that he did not see them, and in that event it is perfectly clear that they could not have misled him. Much of the testimony is concerned with the lights—where they were placed, how many of them would be visible to a vessel approaching from the south, &c.—and there has been much argument concerning what is said to have been their misleading character, but for the reason just given I do not think it either necessary or advisable to go into that

22 subject. It would only be confusing, for it cannot be important, if the pilot is telling the truth; and moreover, it is certainly clear, that even if he had seen or heard of the lights and had supposed them to be upon a moving vessel, he was at fault for taking no bearings if he were in doubt whether the lights were in motion, for giving no signal, for proceeding at full speed, and for not slowing or stopping in time to avoid what (upon the supposition of misleading lights) he must have believed to be a present danger.

But the theory of misleading lights is in conflict with his unequivocal testimony. He could not have supposed the lights to be on a moving vessel if he did not see them at all; and the other circumstances—the absence of signals, the maintenance of speed, &c.—confirm his assertion that he never saw the lights until he was practically on top of the obstruction and was then more than 300 feet

out of his proper course. It is therefore apparent that he could not have been misled by the lights even if they had been improperly disposed, and as this is the only fault charged against the libellant it follows that the whole responsibility must rest with the steamship. In a word, the pilot either got out of his course mistakenly, (which I believe to be the true explanation) or was trying to save time by cutting the angle of the range instead of keeping in the channel. In either event he was where he had no business to be, and the ship must take the consequences. The moving vessel is presumed to be at fault (The Oregon, 158 U. S. 192) and where the fault is obvious and inexcusable, as it was here, the evidence must be clear and convincing to make a case for apportionment; The Victory, 168 U. S. 410. This is the best the Raithmoor could hope for, but on her own showing the navigation was solely in charge of a man who could not have been misled by what he admits he did not see.

I regret that this whole controversy cannot be settled in one proceeding, but as the admiralty jurisdiction now stands I see  
23 no escape from the foregoing conclusion.

A decree may be entered in favor of the libellant with costs. In default of agreement upon the damages a commissioner will be appointed.

#### 24 *Final Decree.*

Filed Sept. 15, 1911.

In the District Court of the United States for the Eastern District of Pennsylvania.

No. 37 of 1909. In Admiralty.

LATTA & TERRY CONSTRUCTION COMPANY

vs.

S. S. "RAITHMOOR."

#### *Final Decree.*

And now, to wit, this 15th day of September, A. D. 1911, this cause having been fully heard upon the pleadings and proofs, and the arguments of the Proctors of the respective parties, and due deliberation being had, and a Stipulation and Agreement as to damages recoverable having been filed with the same force and effect as if such damages had been assessed by a Commissioner, it is ordered, adjudged and decreed by the Court that the libellant have and recover of William Evans, respondent and claimant, and W. Lyman Biddle, his surety, the sum of Three thousand six hundred and sixty-five (\$3,665) dollars, with interest from September 1, 1909 until paid, for damage to libellant's barge and pile driver, and cargo thereon, and also the further sum of One hundred (\$100) dollars, with interest from September 1, 1909, until paid, as assignee and bailee of Benjamin Abbott, as damage for the loss of the money

and effects of said Benjamin Abbott, making a total award to libellant of Three thousand seven hundred and sixty-five dollars (\$3,765), with interest from September 1, 1909, until paid; together with libellant's costs as taxed by the Clerk, amounting to the sum of one hundred and sixty-four dollars and twenty cents (\$164.20): the same being the full amounts recoverable in this proceeding.

And it is further ordered, adjudged and decreed by the Court that the libel be dismissed for want of jurisdiction as to alleged damage to libellant's unfinished beacon and temporary platform as claimed in said libel.

By the Court.

McPHERSON, J.

25

*Certificate, &c.*

Filed Sept. 29, 1911.

In the District Court of the United States for the Eastern District of Pennsylvania.

No. 37 of 1909. In Admiralty.

LATTA & TERRY CONSTRUCTION COMPANY

VS.

S. S. "RAITHMOOR."

*Certificate of Judge That the Question of the Jurisdiction of the Court is in Issue in This Cause and Certifying said Question of Jurisdiction to the Supreme Court of the United States.*

In this cause I hereby certify to the Supreme Court of the United States solely the question as to whether this Court sitting in Admiralty in an action in rem has jurisdiction to redress by an award of damages or otherwise injuries sustained in a collision with a British vessel in navigable waters, by the unfinished beacon light structure, and temporary platform connected therewith, described in the libel and in the Opinion of this Court filed February 24, 1911, to wit: A structure which when finished was to consist of three cylindrical piles of reinforced concrete encased in steel, to be sunk about 19½ feet into the bottom of the river and to project 12 feet above mean high water, and to be protected by depositing rip-rap around them to a specified height, said piles to be covered with a sheet steel cap upon which the government was to later install a lamp and appliances, the completed structure then to be maintained and used by the Government solely as a Government ship channel beacon light as an aid to navigation on the eastern edge of a navigable channel not at the time made fully ready; the site of said structure being in navigable waters of the Delaware River below Newcastle, Delaware, ¾ths of a mile from the eastern or New Jersey shore, about 2 miles from the western or Delaware shore, about 300

26 feet to the eastward of the eastern edge of the then existing ship channel, and surrounded by navigable water, about 27 feet deep at low tide; all of which said structure, with the exception of the lamp and appliances to be installed by the Government on the cap, was, at the time of the collision hereinafter mentioned, under construction by libellant for, under contract with, and under direction and continual supervision of the Government, but libellant's work was not finished nor accepted by the Government although it was approaching completion, the piles being in place and not much remaining to be done except to put the metal cap into place and deposit the rip-rap. After final hearing upon the pleadings and proofs, this Court found in the said Opinion filed February 24, 1911, and made a part of the record, that said unfinished beacon light structure with the temporary platform connected therewith were run into and damaged by the British Steamship "Raithmoor" while afloat in navigable waters in the Delaware River upon a voyage to Philadelphia; but, said unfinished beacon light structure not being fully completed, nor accepted by the Government, nor put into use as a Government beacon light or as an aid to navigation, this Court conceived that it was without jurisdiction to redress the injuries aforesaid, and accordingly, by final decree entered on the 15th day of September, 1911, in accordance with said Opinion filed February 24, 1911, ordered, adjudged and decreed that the Libel filed by libellant be dismissed for want of jurisdiction as to the alleged damage to libellant's unfinished beacon and temporary platform as claimed in said Libel.

This Certificate is made conformably to the Act of Congress of March 3, 1891, Chapter 517, and, upon an appeal being taken by libellant to the Supreme Court of the United States, the Libel, the Answer, the Opinion of this Court filed February 24, 1911, the Final Decree entered September 15, 1911, and this Certificate, will be certified and sent up as part of the proceedings.

JOHN B. McPHERSON, *Judge.*

Approved as to form:

HENRY R. EDMUNDS,

*Proctor for the "Raithmoor."*

H. ALAN DAWSON,

BIDDLE, PAUL & JAYNE,

*Proctors for Libellant.*

*Petition for Allowance of Appeal.*

Filed Sept. 13, 1913.

In the District Court of the United States for the Eastern District of Pennsylvania.

No. 37 of 1909. In Admiralty.

LATTA & TERRY CONSTRUCTION COMPANY

vs.

S. S. "RAITHMOOR."

*Petition for an Appeal.*

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The Petition of Latta & Terry Construction Company, a corporation of the State of New Jersey, libellant and appellant in the above cause, acting herein by its proctors of record and attorneys in fact, H. Alan Dawson, Esquire and Messrs. Biddle, Paul & Jayne, Respectfully represents.

First. That on the 23rd day of July 1909, petitioner filed a Libel in rem in the above cause in the District Court of the United States for the Eastern District of Pennsylvania against the British Steamship "Raithmoor," in a cause of collision, civil and maritime, wherein it prayed, inter alia, that said Court decree the payment to libellant of its damages for injuries to a certain unfinished Government ship channel beacon light, in said Libel and hereinafter in this Petition more particularly described, libellant alleging in said Libel that said Court had jurisdiction of said injuries to said unfinished beacon light structure, and temporary platform connected therewith, and to decree and award payment to libellant of its damages for such injuries, as by reference to said Libel will more full-appear.

Second. That on the 9th day of August 1909, an Answer was filed to said Libel by William Evans, master and claimant of said British Steamship "Raithmoor," wherein it was denied that said Court had jurisdiction of said injuries or to award to libellant its damages for injuries to said beacon light structure, and temporary platform connected therewith, as by reference to said Answer will more fully appear; said action being then and now defended by the said master and claimant.

Third. That thereafter the said cause came on to be heard before the Honorable John B. McPherson, Judge of the said Court, upon depositions and proofs taken in the cause, and upon argument of the proctors for the respective parties, and the said Judge on the 24th day of February 1911 filed his opinion which has been made part of the record in the cause, refusing to take jurisdiction of libellant's claim for damages to the said unfinished beacon light



structure, and temporary platform connected therewith, or to award or decree to libellant payment of its said damages for injuries to said structure, solely upon the ground and for the reason that the said Court had no jurisdiction over said structure or to award damages for injuries thereto, as by reference to said opinion will more fully appear.

Fourth. That thereafter, to wit, on the 15th day of September 1911, a final decree was entered in the cause in accordance with said opinion, wherein said Libel was dismissed for want of jurisdiction of said Court as to the alleged damage to libellant's said unfinished beacon and temporary platform connected therewith, as by reference to said decree will more fully appear.

Fifth. That said unfinished beacon light structure, and  
29 temporary platform connected therewith, and libellant's work thereon and connection therewith, are described in the opinion of the said District Court referred to in the Third Paragraph hereof, as follows, to wit:

"The Company (libellant) was executing an independent contract with the United States, which bound them to furnish the necessary materials, labor, plant &c., and to erect in place a foundation pier to receive a gas beacon. The work was under the continual supervision of a government official, but had neither been finished nor accepted. The structure was to consist of three cylindrical piles of reinforced concrete to be sunk about 19½ feet into the bottom of the river, and to project 12 feet above the mean high water, these to be covered with a sheet steel cap. The piles were to be encased in steel and to be protected also by depositing rip-rap around them to a specified height. When completed the pier was to be used solely as a beacon on the edge of a navigable channel that has not yet been made ready, and the government was to instal- upon the cap a lamp and other appliances. The site is ¾ of a miles from the eastern or New Jersey shore, and about 2 miles from the western or Delaware shore, of the river, and is surrounded by navigable water, about 27 feet deep at low tide. The work was begun in June, and at the time of the collision was approaching completion. The piles were in place, and not much remained to be done except to put the metal cap into place, and deposit the rip-rap. The necessities of the work required a temporary platform to be built close to the concrete piles. This was of wood, about 15 feet square, and rested upon wooden piling driven into the bottom of the river."

Sixth. That the libellant and appellant is advised and believes that in said opinion filed, as set forth in the Third Paragraph hereof, and in the said final decree, as set forth in the Fourth Paragraph hereof, certain errors were committed to the prejudice of said libellant and appellant, in that the said District Court held that it was without jurisdiction of libellant's claim for damages to the said unfinished beacon light structure, and in that said District Court dismissed the Libel for want of jurisdiction as to said claim, all of which will more in detail appear from the assignment of error which is filed with this petition.

Wherefore, the libellant and appellant appeals from said final

decree of the District Court dismissing said Libel for want of jurisdiction as to the damage to libellant's unfinished beacon and temporary platform as claimed in said Libel, to the Supreme Court of the United States, solely to renew the question as to whether

30 said District Court has jurisdiction over said unfinished beacon and temporary platform, that is to say, the question as to whether said District Court had jurisdiction to award or decree to libellant its claim for damages for the injuries to said unfinished beacon light structure and temporary platform, caused by collision with the said Steamship "Raithmoor"; and prays that the transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States, and that said final decree of the District Court dismissing the Libel for want of jurisdiction as to the damage to libellant's unfinished beacon and temporary platform, as claimed in the Libel, may be reversed, and libellant be decreed payment of its said claim for damages for injuries to said unfinished beacon and temporary platform as claimed in said Libel, with interest and costs.

LATTA & TERRY CONSTRUCTION COMPANY,

*Libellant and Appellant,*

By H. ALAN DAWSON,

BIDDLE, PAUL & JAYNE,

*Proctors and Attorneys in Fact.*

H. ALAN DAWSON,

BIDDLE, PAUL & JAYNE,

*Proctors for Libellant and Appellant.*

UNITED STATES OF AMERICA,

*Eastern District of Pennsylvania,*

*City and County of Philadelphia, ss:*

H. Alan Dawson being duly sworn according to law, deposes and says that he is one of the proctors of record for Latta & Terry Construction Company, libellant and appellant above named, and that the facts set forth in the foregoing Petition are true to the best of his knowledge, information and belief; and that the appeal is not taken for the purpose of delay, but because the libellant and appellant believes that an injustice has been done it.

H. ALAN DAWSON.

Sworn and subscribed to before me this 12th day of September, A. D. 1913.

[NOTARIAL SEAL.]

HOWARD KIRK,

*Notary Public.*

*A Notary Public and Commissioner for Pennsylvania,  
in and for the City and County of Philadelphia.*

Commission expires March 25, 1917.



31                      *Assignments of Error.*

Filed Sept. 13, 1913.

In the District Court of the United States for the Eastern District of Pennsylvania.

No. 37 of 1909. In Admiralty.

LATTA & TERRY CONSTRUCTION COMPANY

VS.

S. S. "RAITHMOOR."

*Assignment of Errors.*

And now, this 12th day of September, 1913, the libellant and appellant files the following Assignment of Errors to the final decree of the District Court filed September 15, 1911, dismissing the Libel for want of jurisdiction as to damage to libellant's unfinished beacon and temporary platform as claimed in said Libel:

1. The learned court erred in finding in the opinion filed February 24, 1911, that said Court sitting in Admiralty had no jurisdiction to redress the injury to libellant's uncompleted beacon light structure.

2. The learned court erred in finding in the opinion filed February 24, 1911, that said Court sitting in Admiralty had no jurisdiction to redress the injury to libellant's temporary platform connected with libellant's uncompleted beacon light structure.

3. The learned court erred in directing in the opinion filed February 24, 1911, that the Libel be dismissed for want of jurisdiction as to the damage to libellant's unfinished beacon light structure.

4. The learned Court erred in directing in the opinion filed February 24, 1911, that the Libel be dismissed for want of jurisdiction as to the damage to libellant's temporary platform connected with libellant's unfinished beacon light structure.

5. The learned court erred in the opinion filed February 24, 1911, in failing to find that said Court had jurisdiction to redress the injury to libellant's unfinished beacon light structure.

6. The learned court erred in the opinion filed February 24, 1911, in failing to find that said court had jurisdiction to redress the injury to libellant's temporary platform connected with libellant's unfinished beacon light structure.

7. The learned court erred in entering the final decree dated September 15, 1911, dismissing the libel for want of jurisdiction as to the alleged damage to libellant's unfinished beacon as claimed in said libel.

8. The learned court erred in entering the final decree dated September 15, 1911, dismissing the libel for want of jurisdiction as

to the alleged damage to libellant's temporary platform connected with libellant's unfinished beacon as claimed in said libel.

9. The learned court erred in not entering a decree that libellant have and recover from respondent and claimant, or from his surety, libellant's damage to said unfinished beacon as claimed in said libel, upon due proof of such damage.

10. The learned court erred in not entering a decree that libellant have and recover from respondent and claimant, or from his surety, libellant's damage to said temporary platform connected with said unfinished beacon, as claimed in said libel, upon due proof of such damage.

11. The learned court erred in conceiving and holding that it had no jurisdiction to grant the prayer of the libel that said court decree the payment of libellant's damage for injuries to said unfinished beacon light structure, as claimed in said libel.

12. The learned court erred in conceiving and holding that it had no jurisdiction to grant the prayer of the libel that said court decree the payment of libellant's damage for injuries to said temporary platform connected with said unfinished beacon light structure, as claimed in said libel.

Wherefore, libellant and appellant prays that said final  
33 decree dismissing the libel for want of jurisdiction as to the alleged damage to libellant's unfinished beacon and temporary platform, as claimed in said libel, be reversed, and that said District Court be directed to enter a decree in favor of libellant for said damages.

H. ALAN DAWSON,

BIDDLE, PAUL & JAYNE,

*Proctors for Latta & Terry Construction Company,*

*Libellant and Appellant.*

34

*Order of Court Allowing Appeal.*

Filed Sept. 13, 1913.

In the District Court of the United States for the Eastern District of Pennsylvania.

No. 37 of 1909. In Admiralty.

LATTA & TERRY CONSTRUCTION COMPANY

vs.

S. S. "RAITHMOOR."

Order Allowing Appeal of Jurisdictional Question to the Supreme Court of the United States.

And now, to wit, this 13 day of September, 1913, comes libellant by its proctors of record and files herein and presents to the Court its Petition praying for the allowance of an appeal, together with assignment of errors intended to be urged by it, and praying also

that a transcript of the record, proceedings and papers upon which the Court's Opinion was filed and final decree entered holding that the Court did not have jurisdiction of the alleged damage to libellant's unfinished beacon and temporary platform and dismissing the libel for want of jurisdiction in respect of said damage, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings be had as are proper in the premises.

On consideration whereof the Court does allow the appeal to the Supreme Court of the United States upon the libellant filing an additional bond for costs in the sum of Two hundred and fifty dollars (\$250).

Said appeal is allowed solely in order that the Supreme Court of the United States may review the single and definite question as to whether this Court sitting in admiralty in an action in rem has jurisdiction to redress by an award of damages or otherwise  
35 injuries sustained in a collision with a British vessel in navigable waters, by the unfinished beacon light structure, and temporary platform connected therewith, described in the libel and in the Opinion of this Court filed February 24, 1911, to wit: A structure which when finished was to consist of three cylindrical piles of reinforced concrete encased in steel, to be sunk about 19½ feet into the bottom of the river and to project 12 feet above mean high water, and to be protected by depositing rip-rap around them to a specified height, said piles to be covered with a sheet steel cap upon which the Government was to later instal a lamp and appliances, the completed structure then to be maintained and used by the Government solely as a Government ship channel beacon light as an aid to navigation on the eastern edge of a navigable channel not at the time made fully ready; the site of said structure being in navigable waters of the Delaware River below New Castle, Delaware, ¾th of a mile from the eastern or New Jersey shore, about 2 miles from the western or Delaware shore, about 300 feet to the eastward of the eastern edge of the then existing ship channel, and surrounded by navigable water, about 27 feet deep at low tide; all of which said structure, with the exception of the lamp and appliances to be installed by the Government on the cap, was, at the time of the collision hereinabove mentioned, under construction by libellant for, under contract with, and under direction and continual supervision of the Government, but libellant's work was not finished nor accepted by the Government although it was approaching completion, the piles being in place and not much remaining to be done except to put the metal cap into place and deposit the rip-rap.

JOHN B. McPHERSON,

*Circuit Judge, Holding the District Court of the  
United States for the Eastern District of Pennsylvania.*

36

*Bond for Costs.*

Filed Sept. 13, 1913.

Know all men by these presents, That we, Latta & Terry Construction Company, a corporation of the State of New Jersey, acting herein by its attorney-in-fact H. Alan Dawson, as principal, and National Surety Company, as sureties, are held and firmly bound unto William Evans, Master and claimant of the British Steamship "Raithmoor," and to the said British Steamship "Raithmoor" and owners, in the full and just sum of Two hundred and fifty (\$250.00) dollars, to be paid to the said William Evans, Master and claimant of the British Steamship "Raithmoor," and to the said British Steamship "Raithmoor," their and each of their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this thirteenth day of September, in the year of our Lord one thousand nine hundred and thirteen (1913).

Whereas, lately at a session of the District Court of the United States for the Eastern District of Pennsylvania at Philadelphia, Pennsylvania, in a suit depending in said Court, between Latta & Terry Construction Company, a corporation of the State of New Jersey, libellant, against the British Steamship "Raithmoor," whereof William Evans is Master and claimant, respondent, a decree was entered on September 15th, 1911, against the said Latta & Terry Construction Company, dismissing its libel as to certain claims therein made, and the said Latta & Terry Construction Company having obtained an allowance of an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said William Evans, Master and claimant of the British Steamship "Raithmoor" and to the said British Steamship "Raithmoor" citing and admonishing him and it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Latta & Terry Construction Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make  
 37 its plea good, then the above obligation to be void; else to remain in full force and virtue.

LATTA & TERRY CONSTRUCTION  
COMPANY,

By Its Attorney-in-Fact,

H. ALAN DAWSON.

[SEAL.]

Signature of principal waived by surety.

NATIONAL SURETY COMPANY,  
By THOMAS B. SMITH, [CORPORATE SEAL.]*Res. Vice-Pres.*

Attest:

JOSEPH L. SMITH,

*Res. Ass't Sec.*

Sealed and delivered in the presence of  
HOWARD KIRK.

Before McPherson, J.

Approved—

BY THE COURT.

Attest:

GEORGE BRODBECK,  
*Deputy Clerk.*

38

*Citation.*

UNITED STATES OF AMERICA, ss:

To the British Steamship "Raithmoor" and to William Evans,  
Master and Claimant of the British Steamship "Raithmoor,"  
Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal, duly allowed by the District Court for the Eastern District of Penna. filed in the Clerk's office of the said District Court for the Eastern District of Penna. on the 13th day of September, 1913, in a cause pending in the Supreme Court of the United States, In Admiralty, upon appeal from the District Court of the United States for the Eastern District of Pennsylvania, No. 37 of 1909, In Admiralty, wherein Latta and Terry Construction Company, a corporation of the State of New Jersey, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned, should be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John B. McPherson, Circuit Judge holding the District Court of the United States for the Eastern District of Pennsylvania, this thirteenth day of September, in the year of our Lord one thousand nine hundred and thirteen (1913).

JOHN B. MCPHERSON,

*Circuit Judge.*

I hereby, this thirteenth day of September, 1913, accept due personal service of this citation on behalf of the British Steamship "Raithmoor" and William Evans, Master and claimant of said British Steamship "Raithmoor."

HENRY R. EDMUNDS,  
*Proctor for S. S. "Raithmoor,"*  
*William Evans, Master & Claimant.*

Sept. 13, 1913.

39

*Stipulation.*

Filed Sept. 13, 1913.

In the District Court of the United States for the Eastern District  
of Pennsylvania.

No. 37 of 1909. In Admiralty.

LATTA &amp; TERRY CONSTRUCTION COMPANY

VS.

STEAMSHIP "RAITHMOOR."

Stipulation as to Record Upon Appeal of Libellant to the Supreme  
Court of the United States.

It is hereby stipulated and agreed between proctors for all parties in interest that the record to be certified and sent up to the Supreme Court of the United States upon libellant's appeal this day entered, shall include the following and no other papers unless otherwise ordered by the Supreme Court of the United States or the District Court of the United States for the Eastern District of Pennsylvania:

- (1) Libel of Latta & Terry Construction Company.
- (2) Answer of William Evans, Master and Claimant of the Steamship "Raithmoor."
- (3) Opinion of the District Court filed February 24, 1911.
- (4) Final decree entered by the District Court on September 15, 1911.
- (5) Certificate of the District Court as to jurisdictional questioned involved, filed September 29, 1911.
- (6) Petition of libellant for an appeal, dated September 12, 1913, and filed September 13, 1913.
- (7) Assignment of errors of libellant, dated September 12, 1913, and filed September 13, 1913.
- (8) Order of the District Court allowing appeal, dated and filed September 13, 1913.
- (9) Appeal bond of libellant and surety, dated and filed September 13, 1913.
- 40 (10) Citation on appeal, dated and filed September 13, 1913.

Dated September 13, 1913.

H. ALAN DAWSON,  
BIDDLE, PAUL & JAYNE.*Proctors for Libellant and Appellant.*

HENRY R. EDMUNDS,

*Proctor for Respondent and Claimant and Appellee.*

41 UNITED STATES OF AMERICA,  
*Eastern District of Pennsylvania, set:*

I, William W. Craig, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of Pleas and proceedings in the case of Latta and Terry Construction Company v. British Steamship "Raithmoor" whereof William Evans is Master and Claimant, No. 37 of 1909, as per stipulation of counsel filed, a copy of which is hereto annexed, now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia, this 10th day of October in the year of our Lord one thousand, nine hundred and thirteen and in the one hundred and 38th year of the Independence of the United States.

[Seal of the District Court of the United States, E. D. Penna.]

WILLIAM W. CRAIG,  
*Clerk District Court U. S.,*  
By GEORGE BRODBECK,  
*Deputy Clerk.*

[Endorsed:] U. S. District Court. Certified copy.

Endorsed on cover: File No. 23,893. E. Pennsylvania D. C. U. S. Term No. 272. Latta & Terry Construction Company, appellant, vs. The British Steamship "Raithmoor:" William Evans, master and claimant. Filed October 11th, 1913. File No. 23,893.